IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2007

CORAM:

THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No.33898 of 2007
and M.P.Nos.1 and 2 of 2007

V.Rakshagan ... Petitioner

.Vs.

1.The Tamil Nadu Dr.M.G.R.Medical University
No.69, Anna Salai, Guindy,
Chennai-32,
rep. By its Registrar.

2.The Ragas Dental College,
rep. By its Principal,
E.C.R.Road, Uthendi,
Chennai-119. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the first respondent relating to the "Guidelines for Revaluation of Theory Answer Paper" and quash the guideline No.4 as ultravires, arbitrary and for consequential direction directing the first respondent to re-valuate the answer paper of the petitioner in subject code 4134, "Human oral Anatomy, Physiology, Histology and Tooth Morphology" Written which was conducted in August 2007 and publish the result.

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For Petitioner : Mr.Veera Kathiravan

For Respondents : Ms.AL.Gandhimathi

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O R D E R

The writ petitioner has joined in the B.D.S course in the academic year 2005-2006 in the second respondent college. In the examination conducted in August 2006 for the first year, he has failed in one paper and subsequently by writing the paper in the next exam held on February 2007, he has passed the said paper. Subsequently, in the second year B.D.S. Course, in the examination conducted in August 2007, the petitioner appeared for all the examinations and out of five subjects, he has failed in one subject. According to the petitioner, minimum pass mark is 50. While so, the petitioner has got 40 and since the second year is the break system method, he would loose one complete year, and hence the petitioner applied for revaluation. The petitioner's application was not considered by the first respondent University on the basis that as per the guidelines issued by the first respondent university for revaluation of theory answer paper it does not permit revaluation if a student failed in any paper even in the previous semester. The petitioner has filed the present writ petition to quash the guideline No.4 as ultravires, arbitrary and for consequential direction directing the first respondent to re-valuate the answer paper of the petitioner in subject code 4134, "Human oral Anatomy, Physiology, Histology and Tooth Morphology" Written, which was conducted in August 2007 and publish the result.

2. According to the petitioner, as per Guideline No.5, he is entitled for revaluation being a person who has completed the second year course. The further case of the petitioner is that Guideline No.4 which states that revaluation is not permissible, if a candidate failed in any other subject including those of previous Years/Semesters, it will affect the student community at large and it is also unjustified. It is the further case of the petitioner that he is meritorious and hence his application should be considered as a special case.

3. The first respondent University has filed counter affidavit. While the factual issues which were raised in this case are not in dispute, it is the case of the first respondent University that the concept of revaluation came into effect for the first time when the Governing Council of the first respondent University in Resolution No.19, dated 10.1.2007 has felt that there should be a provision of review of valued answer papers of candidates who are regular in their studies and passed examinations conducted both by the college and by the University, secured good marks to avoid failure by accident or error of judgement and that too to provide an opportunity to them to satisfy themselves regarding the valuation. It is based on that, guidelines were

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prescribed by the Governing Council of the first respondent University. As per the Guidelines which were approved in the council, revaluation is not permissible, if the candidates have failed in any subject including those of previous Years/Semesters. It is further submitted that the the revaluation only in break Semester/Year. In the University Statutes, in respect of B.D.S. Course, the second year and fourth year are admitted to be break years and therefore, students who complete the second and fourth year are entitled for revaluation provided they passed all the subjects including in the previous year in the first attempt. It was based on the said resolution of the Governing Council of the first respondent University, the Standing Academic Board of the University has passed the resolution approving the subject of revaluation of Answer Paper for all the U.G.Courses from February 2007. The case of the first respondent is that in as much as the petitioner has failed in one of the subjects in the first year examination held in August 2006, which paper, he has subsequently passed in February 2007, by applying the said regulations, he was not eligible for revaluation.

4. I have heard the learned counsel for the petitioner and respondents and perused the entire records.

5. The learned counsel for the petitioner has relied upon Guideline No.5 to state that in as much as the petitioner is entitled for revaluation, since he has applied for revaluation after completing the second year and hence he should have been considered by the first respondent University for revaluation of the answer papers. According to the learned counsel, Guideline No.4 does not confer power whereas Guideline No.5 confer such power and they are to be read separately. It is not in dispute that the petitioner has not passed all papers in the first year in the first attempt.

6. Guideline Nos.4 and 5 as given by the first respondent University is as follows:-

> "4. The Revaluation of papers is not permissible if the candidates have failed in any other subject including those of Previous Years/Semesters.
>
> 5. The Revaluation is allowed only if the failure leads to break of Semester/Year (B.D.S.Course-Review is permissible in Second and Final year B.D.S.Only)"

7. The contention raised by the learned counsel for the petitioner, that Guideline Nos.4 and 5 are to be read, isolated has no meaning at all. What is conferred in Guideline No.5 is that

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those who completed the second and fourth Semester/year are eligible for revaluation, since break system is in vogue. The said guideline is certainly subject to other guidelines in respect of theory and valuation papers.

8. Guideline No.4 states the eligibility of a person who apply for revaluation and it states that in the previous years, he should have passed in all papers in the first attempt. He should not have failed in any of the subjects in the previous years or semester. A reading of Guideline Nos.4 and 5 makes it very clear that the petitioner, who has admittedly failed in one of the paper in the first year examination is not eligible for revaluation at all. As a matter of fact, the petitioner has passed the supplementary examination in the first year, therefore by applying Guideline No.4 he is not eligible for revaluation.

9. In my considered view there is no ambiguity in Guideline Nos.4 and 5 and it is not arbitrary or ultravires. Guideline No.4 is not a matter of unconditional right for revaluation at all. Learned counsel for the respondents has rightly contended that the concept of revaluation of Answer papers was introduced in the later stage when the Governing Council of the first respondent University has felt that there should be a provision of review of valued answer papers of candidates who are regular in their studies and passed all examinations conducted both by the college and by the University, secured good marks to avoid failure by accident or error of judgement and that too to provide an opportunity to them to satisfy themselves regarding the valuation. Therefore, the first respondent University is bound by its Guidelines and Statutes. This Court under Article 226 of the Constitution of India cannot direct the University to act against its own statutes.

10. The Supreme Court has held in A.P.CHRISTIANS MEDICAL EDUCATIONAL SOCIETY VS GOVT OF ANDHRA PRADESH reported in AIR 1986 SC 1490, that the universities owe their existence to their Statutes, and they cannot be directed to disobey their own Statutes and Rules. The Supreme Court has made the following observation:-

> "... Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interests of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more

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destructive of the rule of law than a direction by the court to disobey the laws."

11. In view of the same, there is absolutely no substance in the contention raised by the learned counsel for the petitioner and the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nvsri

To

1.The Registrar,
Tamil Nadu Dr.M.G.R.Medical University
No.69, Anna Salai, Guindy,
Chennai-32,

1 cc t Mr.Veerakathiravan, Advocate, sr. 68732
1 cc to Mrs. A.L. Gandhimathi, Advocate, Sr. 68819

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